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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,360	03/16/2004	Erich J. Schlosser	217 P 961	2116

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EXAMINER

BASICHAS, ALFRED

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/801,360

Applicant(s)

SCHLOSSER ET AL.

Examiner

Alfred Basichas

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-3, 8, 14, 15, and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maust (6,267,113) in view of Davis (6,640,803). Mau

a. Maust discloses substantially all of the claimed limitations including, among other things, a gas fueled outdoor fireplace, comprising a fireplace housing (see at least fig. 1) having a housing structure and a plurality of legs 14 extending from the housing structure; a burner 42 connected to the fireplace housing, the burner in fluid communication with a supply of fuel 34,36,37 to provide a flame; and, a plurality of side panels 17 connected to the housing, wherein at least one of the side panels is individually removable from the housing to expose the burner, wherein a plurality of the side panels are connected to the housing without fasteners, wherein a plurality of the side panels are removable from the housing without tools, wherein the side panels are slidingly connected to the outdoor fireplace, further comprising a first handle 35 connected to the fireplace housing, wherein the handle is connected to a portion of the housing structure of the fireplace housing opposing a fuel supply for the outdoor fireplace, wherein the side panels have a first flange and a second flange, the first and second flanges slidingly engaging the fireplace housing to connect the side panels to the housing in the first position, wherein the side panels are slidingly moveable from the first position to a second position, the side panels being

individually removable from the housing in the second position to individually expose the burner.

b. Nevertheless, Maust does not specifically recite removal without any other disassembly of the fireplace.

c. Davis teaches an outdoor fireplace 10 including a plurality of side panels 12 connected to the housing (see at least figs. 1 and 3), wherein at least one of the side panels is individually removable from the housing without any other disassembly (see at least fig. 3). Davis teaches that such an arrangement provides for access (see at least col. 3, lines 24-35).

d. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the claimed limitations as taught by Davis into the invention disclosed by Maust, so as to provide for access.

5. Claims 4, 5, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maust (6,267,113) in view of Davis (6,640,803), which teaches substantially all of the claimed limitations. Maust does not specifically recite the panel blocking the burner from view, a fixed panel, or a hinge on the hood. Nevertheless, these elements are an obvious modification based on design choice, and depends on esthetic considerations and convenience of use. While Maust discloses transparent panels, it would still be within the knowledge and ability of a skilled artisan to make a portion of the panel opaque or colored so as to make the effect more pleasing to the eye. As regards the panel being fixed, it is simply a matter of need or lack thereof for its removal. Finally, as regards a hinge on the cover, this too is well within the knowledge and ability of a skilled

artisan for convenience of access to the interior of the apparatus. In view of the absence of criticality for this particular design, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate these elements into the invention disclosed by Maust and Davis, so as to provide for esthetic considerations and convenience of use.

6. Claims 6, 16, and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maust (6,267,113) in view of Davis (6,640,803), which teaches substantially all of the claimed limitations. Maust and Davis do not specifically recite the claimed wheels or handles. Official Notice is given that the use of wheels and handles is old and well known in the art. Such an arrangement has the clear and obvious benefit of providing for more convenient transport of the device. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the claimed wheels and handles into the invention disclosed by Maust and Davis, so as to provide for convenient transport.

7. Claims 7 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maust (6,267,113) in view of Davis (6,640,803) and further in view of Hussong (5,738,084) and design choice. Maust and Davis teach substantially all of the claimed limitations, but do not specifically recite a separate valved fuel tank with hinged enclosure. Hussong teaches a fireplace with a valved fuel tank within an enclosure. This arrangement is simply a well known equivalent and alternative to the fuel system disclosed by Maust. Nevertheless, the particular design of the housing and arrangement of the fuel tank relative to the fireplace is not taught. However, such an

arrangement is an obvious modification based on design choice, and depends on esthetic considerations and convenience of use. In view of the absence of criticality for this particular design, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate these elements and the fuel arrangement of Hussong into the invention disclosed by Maust and Davis, so as to provide for esthetic considerations and convenience of use.

8. Claims 13 and 23-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maust (6,267,113) in view of Davis (6,640,803) and further in view of Hussong (5,931,154), Wilk 6,354,831), or Shimek (5,601,073). Maust and Davis teach substantially all of the claimed limitations, but does not specifically recite a burner plate as claimed by applicant. Hussong, Wilk, and Shimek all teach burner plates as claimed by applicants. These arrangements are simply well known equivalents and alternatives to the burner system disclosed by Maust. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the burner plate arrangements of Hussong, Wilk, and Shimek into the invention disclosed by Maust and Davis, because it is within the general skill of one of ordinary skill in the art to select a known structure on the basis of its suitability for the intended use.

Response to Arguments

9. Applicants' arguments with regard to the rejected claims, filed September 25, 2006, have been considered, but are deemed moot in view of the new grounds for rejection.

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e. The examiner's assertion of Official Notice is taken to be admitted prior art in view of applicants' non-traversal of the assertion made in the previous office action. MPEP 2144.03. The examiner appreciates applicants' waiver and efforts to expedite prosecution of the instant invention by avoiding unnecessary deliberations of well known aspects of the art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272 4871. The examiner can normally be reached on Monday through Friday during regular business hours.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

October 13, 2006


Alfred Basichas
Primary Examiner